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January 27, 2017

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Telrite Corporation d/b/a Life Wireless Ex Parte Presentation;
WC Docket Nos. 11-42, 09-197, 10-90**

Telrite Corporation d/b/a Life Wireless (Telrite), by its attorneys, submits this letter in response to the January 18, 2017 ex parte letter of TracFone Wireless, Inc. (TracFone) and the January 19, 2017 ex parte letter of Sprint Corporation (Sprint) seeking clarification from the Federal Communications Commission (FCC or Commission) and its Wireline Competition Bureau (Bureau) on several issues related to the Lifeline Modernization Order.¹

¹ See Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 18, 2017) (TracFone Letter); Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (Jan. 19, 2017) (Sprint Letter); see also *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order). In its letter, TracFone asks the Commission and the Bureau to clarify (1) that the revised Lifeline rules only permit 12-month benefit port freezes on broadband Lifeline services that meet the 500 MB minimum service standard for mobile broadband services, (2) that Lifeline service provided to consumers using feature phones does not enable Lifeline consumers to utilize Broadband Internet Access Service (BIAS) as that term is defined in the Commission's rules, and (3) that broadband access through Wi-Fi does not meet the 500 MB minimum standard. See TracFone Letter at 3. Sprint asks for clarification about whether Wi-Fi can be used to meet the minimum data allotment requirement and whether the 3G technology standard is met if a Lifeline ETC provides the subscriber who is classified as a broadband customer with a feature phone that cannot accommodate such technology. See Sprint Letter at 1-2.

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In section I below, Telrite explains that its plans and devices comply with the letter and spirit of the Lifeline Modernization Order, and are made possible by the 12-month benefit port freeze. In section II, Telrite explains that the Lifeline Modernization Order does not require eligible telecommunications carriers (ETCs) to give consumers a smartphone to meet the mobile broadband minimum service standards or qualify for the 12-month benefit port freeze. In section III, Telrite respectfully submits that, for the purposes of ensuring a level-playing field and encouraging an innovative and technology neutral Lifeline program, that the Commission should declare that Telrite's Premium Wi-Fi service meets the definition of BIAS and may be used to meet the applicable broadband minimum service standards.

I. Telrite's Plans and Devices Comply with the Letter and Spirit of the Lifeline Modernization Order and Are Made Possible by the 12-Month Benefit Port Freeze

Telrite's Lifeline-supported broadband plans comply with the letter and the spirit of the Lifeline Modernization Order. In the Lifeline Modernization Order, the Commission places a premium on the development and deployment of innovative service offerings, including Wi-Fi services.² Telrite's broadband Lifeline plans answer the Commission's call. Telrite's offerings include plans with 500 MB or more of cellular data, as well as plans with unlimited access to broadband via Premium Wi-Fi through the resale of iPass's nationwide network of over 34 million broadband access points. Plans featuring unlimited access to iPass's broadband network are available only for customers with smartphones and offer consumers 500 minutes of voice service, unlimited text messages, unlimited access to iPass's broadband data network (and a last-mile virtual private network (VPN)), and an additional allotment of 10 MB of cellular data.³ Because the smartphones Telrite distributes are Wi-Fi enabled, customers also have unlimited access to typically free public, home and community anchor institution Wi-Fi networks. Further, because Telrite's smartphones are hotspot capable, subscribers can connect other devices—such as tablets and laptops—to BIAS through their handset, further enhancing the value of their service. These plans demonstrate that Telrite is laser-focused on achieving the Commission's goals of closing the digital divide⁴ and connecting low-income Americans to jobs, education, government services, family, and community.

² See Lifeline Modernization Order, ¶ 49 & n.132 (“By allowing support for standalone broadband services with Lifeline, we add an additional measure of consumer choice as well as the opportunity for innovative providers to serve low-income consumers in new ways.”).

³ Notably, this plan meets the minimum service standard for voice as well as broadband.

⁴ See Remarks of Chairman Ajit Pai, Federal Communications Commission (Jan. 24, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0124/DOC-343184A1.pdf.

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Telrite's broadband plans include BIAS that meets the letter and spirit of the Lifeline Modernization Order. As explained in more detail in section II below, for new subscribers, Telrite's broadband plans include unlimited access to Premium Wi-Fi. Telrite's Premium Wi-Fi provides the mobility of traditional cellular BIAS and speeds that exceed the Commission's mobile (3G) minimum speed standards and are backed by fixed networks with speeds as good as or better than traditional fixed BIAS. Because it provides unlimited broadband each month, Telrite's Premium Wi-Fi service meets the Commission's 500 MB mobile BIAS and 150 GB fixed BIAS minimum monthly data quantity standards. Where Telrite's Premium Wi-Fi is not available, Telrite also provides at no cost to the consumer a bucket of cellular data that consumers can use as a backup.⁵ To enhance security, Telrite's Premium Wi-Fi service transits over a last-mile VPN, which Telrite provides to its customers free of charge. In total, Telrite's basic broadband plan featuring unlimited access to iPass offers consumers a \$34 value, free of charge, every month.

Telrite's handsets also meet the letter and spirit of the Lifeline Modernization Order. All new Telrite subscribers receive an Android smartphone free of charge upon enrollment, and Telrite offers subscribers who have been active for 180 days a free one-time upgrade to a smartphone. Subscribers who are not eligible for the smartphone upgrade may purchase a smartphone for as little as \$35. At this point, any subscriber with a 3G non-smartphone has had the opportunity to obtain a replacement smartphone for free. As a result, today nearly 70 percent of Telrite subscribers have smartphones, and that number is increasing rapidly as consumers continue to transition to smartphones. Further, since 2014, all Telrite subscribers have received a 4G/LTE-capable SIM card that can be used with any 3G-or-better device, and Telrite's 3G-capable devices (including non-smartphones) contain a web browser and email functionality that enables users to transmit data to and receive data from all or substantially all Internet endpoints.⁶ A significant proportion of these 3G-capable devices also contain a QWERTY keyboard and specialized applications to facilitate communications and Internet browsing.

These plans and devices are made possible because the 12-month benefit port freeze has helped to curb abusive "flipping"⁷ and to incentivize additional investment in innovative services, such as Premium Wi-Fi. Indeed, based on TracFone's letter⁸ and Telrite's experience, the benefit port freeze appears to be working: it is spurring innovative BIAS offerings and more bang for the

⁵ Consumers can purchase additional access to cellular data at affordable rates and at increments as low as \$9.95 for 400 MB.

⁶ Prior to 2014, Telrite distributed 3G-capable SIM cards.

⁷ See, e.g., *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Respondents' Opposition to Petitions for Reconsideration, 3-6 (filed July 29, 2016) (citing comments and ex parte letters referencing the 12-month benefit port freeze).

⁸ See TracFone Letter at 1.

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federal buck, providing a velocity check on abusive practices, and driving smartphone distribution among Lifeline eligible low-income consumers.

II. The Lifeline Modernization Order Does Not Require ETCs to Provide Consumers with a Smartphone to Meet the Broadband Minimum Service Standards or to Qualify for the 12-Month Benefit Port Freeze

In its letter, TracFone seeks clarification that Lifeline service provided to consumers using feature phones does not enable Lifeline subscribers to utilize BIAS, as that term is defined in the Commission's rules.⁹ TracFone asserts that only a smartphone can provide access to mobile BIAS. Sprint seeks clarification on the issue of "whether service providers may classify a subscriber as a Lifeline broadband customer if the device they have provided cannot handle 3G speeds."¹⁰ Telrite submits that no clarification is needed. The Lifeline Modernization Order is already clear: when a device is provided with a Lifeline mobile broadband service, it need not be a smartphone, but the subscriber must receive the capability to access mobile data at 3G speeds to meet the mobile broadband minimum service standard.¹¹ For example, a consumer may receive a 3G-capable SIM card, a 3G-capable handset, a hotspot device, a tablet or a smartphone. Further, Lifeline providers may claim the 12-month benefit port freeze so long as they provide a service that meets the applicable minimum service standards, irrespective of whether they provide a smartphone, a mobile hotspot or any other device.¹²

First, it bears noting that the definition of BIAS does not dictate particular kinds of devices used to access BIAS, whether fixed or mobile.¹³ In particular, the definition of mobile BIAS does not include a smartphone requirement. BIAS is a "mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service."¹⁴ Further, while mobile BIAS "serves end users primarily using mobile stations," the definition of "mobile station" is broad, encompassing any "radio-communication station capable of being moved and which ordinarily does

⁹ See *id.* at 3.

¹⁰ See Sprint Letter at 2.

¹¹ See 47 C.F.R. § 54.408(b)(2)(i); Lifeline Modernization Order ¶ 96.

¹² The Commission's rules do not require carriers to provide a device to Lifeline subscribers; like other subscribers, they may bring their own.

¹³ 47 C.F.R. § 8.2(a).

¹⁴ *Id.*

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move.”¹⁵ This definition is not limited to smartphones; indeed, in the very next sentence, the Commission notes that mobile BIAS “*also includes services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, as well as mobile satellite broadband services.*”¹⁶ These passages demonstrate that the Commission did not intend to limit mobile BIAS to services provisioned in connection with a smartphone, but rather that mobile BIAS may be accessed through a number of means, including but not limited to smartphones and tablets.

Second, the Lifeline Modernization Order does not require Lifeline providers to provide a smartphone in order to receive a subsidy or qualify for the 12-month benefit port freeze. Not only did the Lifeline Modernization Order reject calls to subsidize handsets,¹⁷ neither the rules nor the Lifeline Modernization Order require the provision of a handset at all, let alone a smartphone. Instead, the rules only require that in order to receive Lifeline reimbursement, an ETC must meet the applicable minimum service standards, and that on a going forward basis, if a provider provides a device to the customer, it must be Wi-Fi enabled.¹⁸

Third, focusing on the particular handset ignores technical and practical realities. Specifically, on GSM networks, like the network over which Telrite provides cellular data, the operative piece of equipment is the user’s SIM card, which is tied to the user’s account and enables voice and broadband service. The SIM is the only piece of equipment required in order for the user to establish an account. With respect to the handset, the subscriber has a choice at enrollment: obtain a handset from the provider, purchase a compatible handset from Telrite or a third-party, or use a previously purchased compatible handset (“bring your own device”—BYOD). Subscribers may change their handset at any time, connecting a smartphone on one day and popping the SIM into a 3G-capable non-smartphone device on the next, without the provider’s knowledge or permission. This is a good thing. It promotes consumer choice and handset innovation, and enables subscribers to use the device with which they are most comfortable. For some users, their device of choice may be a smartphone, while for others—particularly the elderly—their device of choice may be a 3G-capable non-smartphone. All along, however, the SIM card remains the same, and establishes the upper-bound of the service plan’s BIAS capability. In Telrite’s case, since 2014 it has been providing consumers with 4G/LTE-capable SIM cards, and before then all of its SIM cards were 3G-capable. Consequently, all Telrite subscribers have the capability to access 3G or better speeds. As such, if the Commission decides to establish an implicit equipment

¹⁵ See 47 C.F.R. § 8.2(e); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 188 (rel. Mar. 12, 2015) (2015 Open Internet Order).

¹⁶ See *id.* (emphasis added).

¹⁷ See Lifeline Modernization Order ¶ 373.

¹⁸ See *id.* ¶ 96; 47 C.F.R. §§ 54.408(b)(2)(i), (f)(1).

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requirement—which Telrite submits is unnecessary—it should judge compliance with the rules in the GSM context based on the capabilities of the underlying SIM, which the provider controls, rather than the device connected to the SIM, which the provider may not control.

Fourth, 3G-capable non-smartphones, including those that Telrite previously provided to its subscribers and that some subscribers continue to use, do provide access to BIAS. As explained above in section I, 3G-capable non-smartphone devices can and do provide users with on-device browsers, email, and applications that enable users to transmit data to and receive data from all or substantially all Internet endpoints in a manner that meets the definition of BIAS under 47 C.F.R. § 8.2. In Telrite’s case, its non-smartphone handsets provide the capability of broadband access at 3G or better speeds and have built-in web browsers, and many have full QWERTY keyboards and can download specialized social media applications (e.g., Twitter). As such, it is false to say that Lifeline subscribers with feature phones “are not able” to transmit data to and receive data from all or substantially all Internet endpoints.

While it is clear that the Lifeline Modernization Order did not condition application of the 12-month benefit port freeze for BIAS plans on distribution of a smartphone, Telrite acknowledges that the distribution of smartphones and investment in innovative service plans was a primary justification for extending the port freeze requirement to broadband.¹⁹ As explained in section I above, Telrite is offering smartphones to all new customers, as well as to existing customers. It is offering plans that meet or exceed the minimum service standards for BIAS. In short, Telrite not only has met the letter and spirit of the new regulatory requirements, it has gone above and beyond to ensure that Lifeline-eligible consumers have access to innovative plans, services and devices that include plans that offer more broadband than a monthly tranche of 500 MB of cellular data.

Although the Lifeline Modernization Order requires no clarification on whether a smartphone is a prerequisite for access to mobile BIAS (it is not), if the Commission determines a declaration is necessary, it should declare that if a provider offers a device with its Lifeline-supported broadband service, the provider need not provide consumers with a smartphone in order to seek reimbursement or avail itself of the 12-month benefit port freeze, so long as the underlying service and device enables access to BIAS at 3G or better speeds (e.g., through a 3G-capable SIM card, a 3G-capable handset, a hotspot device, a tablet or a smartphone).

¹⁹ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 et al., Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program, 17 (Aug. 31, 2015).

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III. Premium Wi-Fi Is BIAS and Premium Wi-Fi Offerings Can Meet the Lifeline Broadband Minimum Service Standards

In their respective letters, TracFone and Sprint submit that Wi-Fi does not meet the Lifeline broadband minimum service standard, and seek clarification from the Commission.²⁰ Specifically, TracFone asks the Commission to clarify that “broadband access through Wi-Fi does not meet the 500 MB minimum standard” and Sprint asks “the FCC to clarify whether a Lifeline ETC that offers less than 500 MB of primary (non-Wi-Fi) data is or is not meeting the minimum service standard,” arguing that “Wi-Fi access in any form does not count toward meeting the minimum mobile broadband service requirement.”²¹ Telrite respectfully submits that its provision of broadband via Premium Wi-Fi indeed qualifies as BIAS. However, for the purposes of ensuring a level-playing field and encouraging an innovative and technology neutral Lifeline program, Telrite also submits that the Commission should declare that its Premium-Wi-Fi-supported broadband meets the definition of BIAS and may be used to meet the broadband minimum service standards.²²

As a threshold matter, Telrite’s Premium-Wi-Fi-supported broadband service is BIAS. Telrite’s Premium Wi-Fi is a mass-market retail service that enables a consumer to access a network of BIAS connections—including but not limited to cable broadband providers—over Wi-Fi through an application on the user’s smartphone. Unlike services that merely aggregate open Wi-Fi networks, Telrite’s Premium Wi-Fi relies on negotiated arrangements between the underlying Premium Wi-Fi provider and the underlying broadband providers. When a user accesses the Internet through Telrite’s Premium Wi-Fi, the Wi-Fi connection provides the local network link between the consumer’s device and the underlying BIAS networks, just as is the case with mobile cellular broadband or fixed broadband accessed through a smartphone. As stated above, Telrite resells the network of iPass, which currently provides access to over 34 million broadband access points throughout the United States, and more globally, providing a dense network that users can access at home or on the go. Telrite’s Premium Wi-Fi also includes several features that distinguish it from traditional public Wi-Fi networks. These services include a secure connection through a last-mile VPN; a seamless experience that enables automatic connection to the strongest broadband signal in the area; and an app with speed test and hotspot finder functionality. In this way, Telrite’s

²⁰ See Sprint Letter at 2. In the Lifeline Modernization Order, the Commission includes BIAS as a supported service. See Lifeline Modernization Order ¶ 39.

²¹ See TracFone Letter at 3; Sprint Letter at 2.

²² As described above, the broadband Premium Wi-Fi Telrite resells and incorporates into some of its Lifeline service offerings is distinguishable from free public Wi-Fi. The service has a market value of \$25 and it provides access through a secure VPN connection (an additional \$9 value) to a vast nationwide network of Wi-Fi broadband access points, similar to the manner in which cellular data service provides secure access to a nationwide network of cellular access points.

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Premium Wi-Fi provides an experience with mobility like cellular BIAS and speeds that meet or exceed those of fixed BIAS.²³

Further, Telrite's Premium Wi-Fi is BIAS that meets the applicable mobile broadband minimum speed standards and traverse fixed network sources that are as fast as or faster than traditional fixed BIAS networks. To be eligible for Lifeline support, mobile BIAS must provide "3G or higher" speed service.²⁴ This reference to 3G is not meant to require a specific cellular or "primary" broadband delivery technology, but rather to serve as a proxy for the speed of service. Indeed, in the 2011 USF/ICC Transformation Order, the FCC established minimum speed standards using the generation (e.g., 3G) as a proxy for a specific speed.²⁵ A 3G network "meet[s] or exceed[s] an outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices."²⁶ Here, if a consumer were to access the Internet via Premium Wi-Fi service, the speeds would exceed the 3G speed threshold. Moreover, the Commission has confirmed that mobile BIAS is not limited to cellular connections, but rather "*also includes services*" such as Premium Wi-Fi "that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet."²⁷ This expansive definition makes sense—if the Commission were to limit support for mobile BIAS to cellular data connections, it would effectively foreclose those innovative service offerings that it expressly seeks to promote, including popular "Wi-Fi First" offerings. Furthermore, because Telrite's Premium Wi-Fi service relies on a network of fixed connections, the service speed meets or exceeds those of traditional fixed BIAS networks. In addition, contrary to Sprint's assertions, no support can be found in the Lifeline Modernization Order or the new Lifeline rules that broadband data must be carried over the "ETC's own cellular network" to qualify for reimbursement. Indeed, the Commission has long permitted carriers to receive broadband support through the resale of another carrier's network, and it does not disturb this finding in the Lifeline Modernization Order.²⁸ Finally, the Lifeline Modernization Order actively encourages providers to offer "new, innovative products and services" that "push the envelope in search of better ways to

²³ If the Commission determines that Telrite's Premium Wi-Fi is not mobile BIAS, the service may still be considered fixed BIAS. Specifically, while Premium Wi-Fi uses smartphones and mobile-network-enabled tablets as the primary endpoints for connection to the Internet, meeting the definition of mobile BIAS, it also enables connectivity in a manner similar to traditional Wi-Fi connections to fixed BIAS connections.

²⁴ See Lifeline Modernization Order ¶¶ 96, 105.

²⁵ See Connect America Fund, et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 362 (rel. Nov. 18, 2011).

²⁶ *Id.* ¶ 361.

²⁷ See 2015 Open Internet Order ¶ 188 (emphasis added).

²⁸ See Lifeline Modernization Order ¶¶ 45, 242 (citations omitted).

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delivery broadband to . . . subscribers.”²⁹ As such, any BIAS offering is eligible for monthly Lifeline reimbursement so long as the provider meets the Commission’s speed and quantity minimum service standards.

Here, Telrite’s broadband plans featuring unlimited broadband via Premium Wi-Fi comply with the applicable broadband quantity minimum service standards. Telrite provides³⁰ consumers with *unlimited* Premium Wi-Fi each month at no cost, far exceeding the Commission’s 500 MB mobile minimum service standard and the 150 GB fixed broadband minimum service standard. Further, when subscribers use Premium Wi-Fi, they achieve speeds that exceed the mobile BIAS minimum service standards and include performance characteristics that meet or exceed traditional fixed BIAS speeds. Because this offering meets the Commission’s minimum service standards, it is clear that the service qualifies for the 12-month benefit port freeze. For these reasons, the Commission should declare that Telrite’s Premium Wi-Fi is BIAS that meets the applicable minimum service standards.

* * *

While Telrite cannot speak for any other Lifeline ETC, it is clear that Telrite has not abused the expanded benefit port freeze requirements in any way. Instead, it offers traditional plans that include cellular access to broadband, as well as plans that include access to broadband via Premium Wi-Fi. While the majority of its customers on broadband plans have smartphones, others have devices capable of accessing the Internet at 3G or better speeds. To help transition subscribers into the broadband age, Telrite ensures that each customer has a variety of communications options, including voice and text. In short, the letter and spirit of the broadband benefit port freeze is working as intended to spur innovation, adoption, smartphone distribution, more robust service plans for consumers and healthy competition.

²⁹ See *id.* ¶ 373.

³⁰ Importantly, when Telrite resells Premium Wi-Fi to its subscribers, and those subscribers use the service to access the Internet, Telrite is properly considered the “provider” of the Premium Wi-Fi service, in a manner similar to the relationship between a mobile virtual network operator (MVNO) and its underlying mobile network operator (MNO).

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Pursuant to section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



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